



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 17, 2022

IN THE MATTER OF:

Appeal Board No. 622714

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 622712, 622713, and 622714, the claimant appeals from the decisions of the Administrative Law Judge filed April 6, 2022, which modified the initial determination holding the claimant ineligible to receive benefits, effective April 21, 2021, on the basis that the claimant was not available for employment, to be effective April 21, 2021 through August 29, 2021, and as so modified, sustained the initial determination; and sustained the initial determinations charging the claimant with an overpayment of \$4,371 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$4,500 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 60 effective days and charging a civil penalty of \$1,330.65 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

On appeal, the claimant contended that she was denied the opportunity to have her son represent her at the hearing. We agree. The case should be remanded to hold a further hearing on all of the issues. The claimant's representative shall be given the opportunity to question the claimant on the issues and to make any objections to the exhibits that were entered into evidence at the

previous hearing. He should also be given the opportunity to provide any relevant testimony that he may have on the issues. The employer should produce Marina Tkachuk, and the claimant's representative shall be allowed to cross-examine the witness' testimony that she gave at the previous hearing.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER